

BY EMAIL

Ms Bev Smith
Chief Executive
North West Leicestershire District Council
Council Offices
Coalville
Leicestershire
LE14 3NH

Date: 22nd November 2018

My ref: JS/JC/18-265

Your ref:

Contact:

Phone: John Sinnott

Email: [REDACTED]

john.sinnott@leics.gov.uk

WITHOUT PREJUDICE SAVE AS TO COSTS

SUBJECT TO CONTRACT

Dear Bev

The Marlborough Square Project

I refer to your email dated 14 November 2018.

In that email you proposed that the existing working arrangements be brought to an end and that North West Leicestershire District Council (hereinafter "NWLDC") should take over the further development of this project.

Subject to the payment of certain costs detailed herein and the completion of handover arrangements, the County Council is likewise content to bring its involvement in this project to a conclusion.

Financial Issues

As detailed below, the County Council has committed a substantial amount of time and resources into the progression of the Marlborough Square project. The outstanding costs are detailed in Appendix 1.

Contd/...

Chief Executive's Department
Leicestershire County Council, County Hall, Glenfield, Leicestershire LE3 8RA
Telephone: 0116 232 3232 Fax: 0116 305 6161 Minicom: 0116 305 6870

John Sinnott CBE, MA, Dipl. PA, Chief Executive
Lauren Haslam, LLB(Hons), Dip.L.G. Director of Law & Governance

www.leicestershire.gov.uk

NWLDC will need to meet the County Council's and Morgan Sindall's costs to date. In total, there is a net outstanding balance of [REDACTED]. The works represented by those costs were authorised by the project board and I am satisfied that these costs are both proper and recoverable.

On the matter of costs, your officers appear to be of the view that there has only been a £23,000 increase in scope from the last estimate and the scheme costed under the target price. That is incorrect.

The reasons for the increases in costs are set out in the attached report and can be summarised as resulting almost entirely from interventions from your colleagues.

Plans / Intellectual Property

Subject to the settlement of the outstanding costs, the County Council will provide you, or your servants or agents, with the plans of the scheme as far as they have progressed.

The plans do not represent a final scheme due to the inability of your officers to decide what they want or convey final decisions.

The History of the Project

Whilst, it is in the public interest that our respective authorities co-operate on handover matters, I do feel it necessary to address the criticisms which have been made of the Council.

The success of the project has always been contingent upon NWLDC co-operating on matters which required input from your side. I am satisfied that the following issues have acted as a serious impediment to progress in this project:-

- **Decision making** – There has been an inability to take decisions and a lack of clarity on what has been wanted for the scheme on the part of NWLDC. Even when decisions appeared to be made they were then revisited by NWLDC resulting in a lack of progress. Concern on the impact this was having on both timescales and budget led to the Director of Environment & Transport contacting you directly as far back as April this year.
- The risk of the inability to agree a final scheme and therefore no target price from the contractor with no time to de-scope the project was significant, even at that time. Unfortunately, despite this being raised with you in April, we have now, in November, seen this risk materialise in full despite our attempts to have NWLDC take action to avoid it.
- As late as 30 August (two weeks after design freeze drawings were issued to the contractor) there was a request from [REDACTED] for the County Council

to consider changes and provide information on 'ideas to make the Square work better'. This was in the context of a start on site on 1 October.

- If I had known that at the time, I would have suggested ending the County Council's involvement then. The attached report sets out the County Council's expectations in respect of working with NWLDC. Going back to April, some of the outstanding decisions required from NWLDC at that time were still awaited in November, seven months later.
- **Specification** - It was highlighted to your officers on numerous occasions that the specification NWLDC required on the decisions they did manage to make would likely exceed the budget. But in the most recent de-scoping exercise your officers were still asking for the addition of new elements that would only add cost. I understand that even the contractor, Morgan Sindall, felt the need to advise your officers that they were discussing items the budget could not afford. The messages given to your colleagues could not have been clearer but appear not to have been received.
- **Delegation** – It was evident that no meaningful delegation was given to your lead officer with decision-making having to be referred upwards. An example was the decision on the type of blocks to be used (affecting our ability to provide cost estimates and adding time delays) as well as the level of questioning of and information County Council officers were required to provide.
- An example (out of many) was asking what substances is it difficult to remove from granite blocks? You either have a professional client/contractor relationship with experienced people empowered to take decisions or sooner than later someone has to draw a line.
- **Lack of trust in the County Council** – Your colleagues were continually requesting more and more detail to ensure 'the information produced can control the quality of development with any contractor and deliver against the aspirations for the scheme'.
- That goes beyond the requirements of standard practice for scheme design and construction, demonstrating a clear lack of trust of the professional engineers. Similarly, suggestions from your officers that NWLDC would require clauses for NWLDC to sign off the plans in the S278 agreement revealed the same.
- As was explained on several occasions, under the Construction (Design and Management) Regulations, the County Council was the principal designer. Should any other party want to approve or change the design, they would have to take on the role of principal designer which would not be acceptable to any commissioned consultant let alone the County Council as highway authority.

- Apart from a lack of trust in the professional engineers, this demonstrated a clear lack of understanding of project delivery by NWLDC.

I said to you when we first spoke about the problems with Marlborough Square that I would accept responsibility if the County Council had not got everything right. That remains the case but I am left to conclude that this project has stalled due to some fundamental failings on the part of NWLDC as described above. Due to the issues raised above, I am afraid there was an inevitability as to the position we have now reached.

Next Steps

In order to move forward the following needs to happen:

1. NWLDC to pay costs to date as detailed above. I would be grateful if these costs could be paid within 28 days.
2. The County Council will provide design drawings and associated paperwork to NWLDC within 14 days after payment of the outstanding costs.
3. The County Council will facilitate delivery of blocks already ordered to NWLDC (NWLDC to specify where).
4. The County Council will provide information on the S278 process that will be required to approve the scheme you want to deliver and for works on the highway by your appointed contractor.

Subject to the fulfilment of the foregoing terms, I am satisfied that we will have reached an 'accord and satisfaction'. Our respective authorities will then be discharged from the existing contractual arrangements.

Given what was stated and the inferences in the note to members of your Cabinet which you forwarded to me for information, it has been important for the County Council to set out its position clearly, which this letter and the accompanying report does.

I am satisfied that the County Council has acted in good faith and entirely professionally throughout this process. As stated, the County Council will co-operate on a handover on the terms set out above and hopefully that will enable NWLDC to move forward with the project in the interests of the people of Coalville.

Yours sincerely



APPENDIX 1



